



Memorandum

Date : January 2024

To : All Licensed Vehicle Manufacturers and Distributors
Public Mailing List

From : New Motor Vehicle Board
(916) 445-1888
nmvb@nmvb.ca.gov

Subject : Delivery and Preparation Obligations/Schedule of Compensation Warranty Reimbursement Schedule (or Formula for Recreational Vehicles)

Statutorily Required Notices:

- (1) Statutory Notice Re: Factory Ownership of Dealership
- (2) Annual Statutory Notice Re: Dealer Development Stores

Delivery and Preparation Obligations/Schedule of Compensation Warranty Reimbursement Schedule (or Formula for Recreational Vehicles)

As part of the Board's educational outreach efforts, the industry is reminded that Vehicle Code sections 3064¹ and 3074² require that every franchisor **shall** file a copy of their delivery and preparation obligations, as well as, a schedule of compensation, with the New Motor Vehicle Board ("Board"). Additionally, Vehicle Code section 3065³ requires that every franchisor shall file a copy of its warranty reimbursement

¹ Section 3064(a) provides, in part, that "[a] copy of the delivery and preparation obligations...and a schedule of compensation to be paid to franchisees for the work and services they shall be required to perform in connection with those delivery and preparation obligations shall be filed with the board by franchisors, and shall constitute the compensation as set forth on the schedule." This provision applies to manufacturers and distributor of cars, motorcycles, all-terrain vehicles, buses, and heavy-duty trucks.

² The requirements in Section 3074(a) are almost identical to Section 3064(a) but apply to recreational vehicle manufacturers and distributors.

³ Section 3065(a) provides, in part, that "[e]very franchisor shall properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to satisfy the warranty obligations of the franchisor, including, but not limited to, diagnostics, repair, and servicing and shall file a copy of its warranty reimbursement schedule with the board." This provision applies to manufacturers and distributor of cars, motorcycles, all-terrain vehicles, buses, and heavy-duty trucks.

schedule with the Board. Section 3075⁴ requires that every franchisor shall file a copy of its warranty reimbursement schedule or formula with the Board.

All filings in this regard are maintained for three years. Therefore, it is incumbent that each manufacturer and distributor file a copy of their current delivery and preparation obligations (PDI), PDI schedule of compensation, and warranty reimbursement schedule (or formula for RV manufacturers/distributors) with the Board.

If you do not provide PDI reimbursement or warranty reimbursement, or do not have dealers in California, please indicate as such in a letter to the Board. Otherwise, please file the above documents with the Board by Tuesday, April 30, 2024. These documents should be filed with the Board at least every three years, or more often if they are modified.

Statutorily Required Notices

Subdivision (o) of Vehicle Code section 11713.3 prohibits a manufacturer or distributor from competing with their franchises in the sale, lease, or warranty service of new motor vehicles.⁵ There are limited exceptions to this prohibition: (1) temporary ownership (Veh. Code § 11713.3(o)(2)(A)); and (2) bona fide dealer development program (Veh. Code § 11713.3(o)(2)(B)).⁶ The statutorily required notices that are filed with the Board provide as follows:

(1) Statutory Notice Re: Factory Ownership of Dealership

Vehicle Code section 11713.3(o)(3)(A) requires every manufacturer, branch, and distributor that owns or operates a dealership for a temporary period (not to exceed one year at the location of a former dealership of the same line-make that has been out of operation for less than six months) shall give written notice to the Board, within 10 days, each time it commences or terminates operation of a dealership and each time it acquires, changes, or divests itself of an ownership interest.

(2) Annual Statutory Notice Re: Dealer Development Stores

Vehicle Code section 11713.3(o)(3)(B) requires every manufacturer, branch, and distributor that owns an interest in a dealer as part of a bona fide dealer development program as defined shall give written notice to the Board, annually, of

⁴ The requirements in Section 3075(a) apply to recreational vehicle manufacturers and distributors and reference the filing of a warranty reimbursement schedule or formula with the Board.

⁵ Amendments to subdivision (o) of Section 11713.3 were effective January 1, 2024. The text of Assembly Bill 473 (Assembly Member Aguiar-Curry; Ch. 332, Stats. 2023) is available at: https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml.

⁶ Effective January 1, 2024, additional exceptions that do not require statutorily notice were added in Section 11713.3(o)(4). The text of this statute on pages 6-7 of this notice.

the name and location of each dealer in which it has an ownership interest, the name of the bona fide dealer development owner or owners, and the ownership interests of each owner expressed as a percentage.

Filings Subject to Public Disclosure

The Board maintains all of these filings as public records subject to disclosure under the California Public Records Act (Gov. Code § 7920.000, et seq.).

Please see the attachment titled “What needs to be filed?” for further information.

If you have any questions or comments, please do not hesitate to contact Robin Parker, Chief Counsel at Robin.Parker@nmvb.ca.gov or Jason Rose, Senior Staff Counsel at Jason.Rose@nmvb.ca.gov.

California Vehicle Code Section 3064

(a) Every franchisor shall specify to its franchisees the delivery and preparation obligations of the franchisees prior to delivery of new motor vehicles to retail buyers. A copy of the delivery and preparation obligations, which shall constitute the franchisee's only responsibility for product liability between the franchisee and the franchisor but shall not in any way affect the franchisee's responsibility for product liability between the purchaser and either the franchisee or the franchisor, and a schedule of compensation to be paid to franchisees for the work and services they shall be required to perform in connection with those delivery and preparation obligations shall be filed with the board by franchisors, and shall constitute the compensation as set forth on the schedule. The schedule of compensation shall be reasonable, with the reasonableness thereof being subject to the approval of the board, if a franchisee files a notice of protest with the board. In determining the reasonableness of the schedules, the board shall consider all relevant circumstances, including, but not limited to, the time required to perform each function that the dealer is obligated to perform and the appropriate labor rate.

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(Amended by Stats. 2013, Ch. 512, Sec. 12. (SB 155) Effective January 1, 2014.)

California Vehicle Code Section 3065

(a) Every franchisor shall properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to satisfy the warranty obligations of the franchisor, including, but not limited to, diagnostics, repair, and servicing and shall file a copy of its warranty reimbursement schedule with the board. The warranty reimbursement schedule shall be reasonable with respect to the time and compensation allowed to the franchisee for the warranty diagnostics, repair, servicing, and all other conditions of the obligation, including costs directly associated with the disposal of hazardous materials that are associated with a warranty repair.

(1) The franchisor shall use time allowances for the diagnosis and performance of work and service that are reasonable and adequate for a qualified technician to perform the work or services. ...

(2) A franchisor shall not replace, modify, or supplement the warranty reimbursement schedule to impose a fixed percentage or other reduction in the time or compensation allowed to the franchisee for warranty repairs not attributable to a specific repair. A franchisor may reduce the allowed time or compensation applicable to a specific warranty repair only upon 15 days' prior written notice to the franchisee.

...

(b) In determining what constitutes a reasonable warranty reimbursement schedule under this section, a franchisor shall compensate each of its franchisees for parts and labor at rates equal to the franchisee's retail labor rate and retail

parts rate, as established pursuant to Section 3065.2. Nothing in this subdivision prohibits a franchisee and a franchisor from entering into a voluntary written agreement signed by both parties that compensates for labor and parts used to satisfy the warranty obligations of the franchisor at rates other than the franchisee's retail rates, provided that the warranty reimbursement schedule adequately and fairly compensates the franchisee.

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(Amended by Stats. 2019, Ch. 796, Sec. 11. (AB 179) Effective January 1, 2020.)

California Vehicle Code Section 3074

(a) A franchisor shall specify to its franchisees the delivery and preparation obligations of the franchisees prior to delivery of new recreational vehicles to retail buyers. A copy of the delivery and preparation obligations, which shall constitute the franchisee's only responsibility for product liability between the franchisee and the franchisor but which shall not in any way affect the franchisee's responsibility for product liability between the purchaser and either the franchisee or the franchisor, and a schedule of compensation to be paid franchisees for the work and services they shall be required to perform in connection with the delivery and preparation obligations shall be filed with the board by franchisors, and shall constitute the compensation as set forth on the schedule. The schedule of compensation shall be reasonable, with the reasonableness thereof being subject to the approval of the board, if a franchisee files a notice of protest with the board. In determining the reasonableness of the schedules, the board shall consider all relevant circumstances, including, but not limited to, the time required to perform each function that the dealer is obligated to perform and the appropriate labor rate.

...

(Amended by Stats. 2015, Ch. 407, Sec. 10. (AB 759) Effective January 1, 2016.)

California Vehicle Code Section 3075

(a) A franchisor shall properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to fulfill that warranty when the franchisee has fulfilled warranty obligations of repair and servicing and shall file a copy of its warranty reimbursement schedule or formula with the board. The warranty reimbursement schedule or formula shall be reasonable with respect to the time and compensation allowed the franchisee for the warranty work and all other conditions of the obligation. The reasonableness of the warranty reimbursement schedule or formula shall be determined by the board if a franchisee files a notice of protest with the board.

(b) In determining the adequacy and fairness of the compensation, the franchisee's effective labor rate charged to its various retail customers may be considered together with other relevant criteria.

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(Added by Stats. 2003, Ch. 703, Sec. 11. Effective January 1, 2004.)

California Vehicle Code Section 11713.3(o)

It is unlawful and a violation of this code for a manufacturer, manufacturer branch, distributor, or distributor branch licensed pursuant to this code to do, directly or indirectly through an affiliate, any of the following:

...

(o) (1) To compete with their franchisees in the sale, lease, or warranty service of new motor vehicles.

(2) A manufacturer, branch, or distributor, or an entity that controls or is controlled by a manufacturer, branch, or distributor, shall not, however, be deemed to be competing in the following limited circumstances:

(A) Owning or operating a dealership for a temporary period, not to exceed one year at the location of a former dealership of the same line-make that has been out of operation for less than six months. However, after a showing of good cause by a manufacturer, branch, or distributor that it needs additional time to operate a dealership in preparation for sale to a successor independent franchisee, the board may extend the time period.

(B) Owning an interest in a dealer as part of a bona fide dealer development program that satisfies all of the following requirements:

(i) The sole purpose of the program is to make franchises available to persons lacking capital, training, business experience, or other qualities ordinarily required of prospective franchisees and the dealer development candidate is an individual who is unable to acquire the franchise without assistance of the program.

(ii) The dealer development candidate has made a significant investment subject to loss in the franchised business of the dealer.

(iii) The program requires the dealer development candidate to manage the day-to-day operations and business affairs of the dealer and to acquire, within a reasonable time and on reasonable terms and conditions, beneficial ownership and control of a majority interest in the dealer and disassociation of any direct or indirect ownership or control by the manufacturer, branch, or distributor.

(C) Owning a wholly owned subsidiary corporation of a distributor that sells motor vehicles at retail, if, for at least three years prior to January 1, 1973, the subsidiary corporation has been a wholly owned subsidiary of the distributor and engaged in the sale of vehicles at retail.

(3) (A) A manufacturer, branch, and distributor that owns or operates a dealership in the manner described in subparagraph (A) of paragraph (2) shall give written notice to the board, within 10 days, each time it commences or terminates operation of a dealership and each time it acquires, changes, or divests itself of an ownership interest.

(B) A manufacturer, branch, and distributor that owns an interest in a dealer in the manner described in subparagraph (B) of paragraph (2) shall give written notice to the board, annually, of the name and location of each dealer in which it has an

ownership interest, the name of the bona fide dealer development owner or owners, and the ownership interests of each owner expressed as a percentage.

(4) In addition to the exceptions identified in paragraphs (2) and (3), a manufacturer, manufacturer branch, distributor, or distributor branch, or an affiliate thereof, shall not be deemed to be competing with their franchisees in any of the following limited circumstances:

(A) When directly providing an update to or repair of motor vehicle software, if the update or repair is provided over-the-air at no cost.

(B) When creating a new line of motor vehicles and using new or existing franchisees to sell and service those vehicles.

(C) When authorizing a fleet operator or other third party, such as a government entity or a commercial or rental fleet operator, to perform warranty service work on fleet vehicles owned or operated by a fleet owner, operator or other third party, provided that the franchisor does not prohibit or prevent the fleet operator or other third party from obtaining warranty service work from a franchisee of the same line-make.

(D) When owning or operating a dealership for the fleet sale or service of autonomous vehicles, provided that the dealership is of a line-make that does not have franchisees and the dealership does not engage in the sale of consumer goods, as defined by Section 1761 of the Civil Code.

(E) For the purposes of this paragraph, the following definitions shall apply:

(i) "Autonomous vehicles" shall have the same meaning as "autonomous vehicle" in paragraph (2) of subdivision (a) of Section 38750.

(ii) "Fleet vehicles" shall mean five or more vehicles under common ownership or operation.

(iii) "Fleet sale" shall mean a sale to a person that owns, operates, or maintains fleet vehicles.

(5) For the purposes of this subdivision, "warranty" shall have the same meaning as set forth in Section 3065.25.

(Amended by Stats. 2023, Ch. 332, Sec. 4 (AB 473) Effective January 1, 2024.)

What Needs to be Filed?

Delivery and Preparation Obligations (also known as Pre-Delivery Inspections or PDI)

Each manufacturer shall provide information to the Board explaining the obligations imposed on dealers by the manufacturer with regard to the delivery and preparation of the units the manufacturer sells through dealers in California. If your company uses a PDI Checklist and it encompasses the entire obligation imposed upon the selling dealer, you can simply submit a copy of the PDI Checklist. Information can also be submitted in the form of copies of sections of manuals or contracts that identify the obligations, or a letter to the Board on company letterhead detailing the obligations.

Schedule of Compensation for Delivery Preparation Obligations (PDI Reimbursement)

Does your company reimburse dealers for the performance of Pre-Delivery Inspection Obligations? If so, identify how they are compensated for the work.

For example:

- Are dealers compensated different amounts based on the type of unit?
- Are dealers paid a flat dollar amount for performing the obligations?
- Are dealers paid a flat time at a particular labor rate for performing the obligations?
 - If so, state what the values are.
 - An example might be: The manufacturer pays 1.2 hours at the dealer's posted shop rate or agreed upon labor rate; or they pay \$50 per unit; or hours paid for each unit if they differ from model to model.

Warranty Reimbursement Schedules or Formulas

How your company reimburses for warranty repairs. Report the warranty reimbursement schedule (or formula for RV manufacturers) for your franchisees.

For example:

- Does your company pay the dealers' retail labor rate and retail parts rate?
- Has your company entered into a voluntary written agreement with any franchisees at rates other than the franchisee's retail labor rate and retail parts rate? **If you have entered into a voluntary written agreement, you do not need to provide it to us.**
- Does your company use a flat rate manual or pay the straight time submitted by the dealer for any given repair? Please state how your company pays dealers for its warranty repairs in your response. **If you use a flat rate manual, you do not need to provide it to us.**

If dealers **do not have any obligations** with respect to any of the above categories, or if **you have no dealers** in California, please state so in a letter to the Board on your company letterhead. If you have filed your warranty/PDI information in the last three years and there have been no changes, **you do not need to file anything.**

Filings Subject to Public Disclosure

The Board maintains all of these filings as public records subject to disclosure under the California Public Records Act (Gov. Code § 7920.000 et seq.) Therefore, any documents filed will be subject to public records requests, even if your company has stamped or identified the documents as confidential. Please contact our office if you have questions about the confidentiality of documents your company will be filing.